IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

FRIDAY, THE 17TH NOVEMBER 2006 / 26TH KARTHIKA 1928

Crl.MC.No. 75 of 2005(D)

AGAINST THE ORDER DATED 26/11/2004 IN CRMP 3519/2004 IN ST.136/1996 of CHIEF JUDICIAL MAGISTRATE, ALAPPUZHA

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PETITIONER: COUNTER PETITIONER:

MONI KUNCHERIA, S/O.M.T.KUNCHERIA,
MADANAPPILLIL HOUSE, VAZHICHERRY,
ALLEPPEY DISTRICT.

BY ADV. SRI.N.SUBRAMANIAM
SRI.M.S.NARAYANAN

RESPONDENTS: PETITIONER:

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1. ANNAMMA VARGHESE, W/O.CHERIAN P.VARGHESE
POOPPALLY, ALAPPUZHA DISTRICT.

2. STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

BY ADV. SRI. K.G. BHASKARAN, PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 17/11/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.R. UDAYABHANU, J

CRL. M.C. NO. 75 OF 2005

Dated this the 17th day of November 2006

ORDER

The petitioner, who is the complainant in S.T. 136/1996 with respect to offence under section 138 of the Negotiable Instruments Act in the file of Chief Judicial Magistrate, Alappuzha, has sought for setting aside the order of the court below in C.M.P. No. 3519/2004. It is contended that the above order along with the application to recall PW1 is not supported by any reason and hence resulted in manifest injustice. It is pointed out that the prosecution evidence was over and the accused was questioned under section 313 Cr. P.C on 4.08.2001 itself. It is, thereafter, more than 3 years, on an application by the accused, the court has ordered recalling of PW1 without mentioning any reason. It is pointed out that the application was stiffly opposed.

2. The respondent/accused although served did not make appearance. I find that the court below has not mentioned any reason in the order in Crl. M.P. No. 3519/2004 while allowing the same. The statement in the order that there was no serious objection to the complainant is disputed by the petitioner.

In the circumstances, I find that the short cut adopted by the court below cannot be justified. The order in Crl. M.P. No. 3519/2004 is set aside. The court below is directed to reconsider the matter and dispose of the application vide a reasoned order. The Crl. M.C is allowed. The parties shall appear before the court below on 28.11.2006.

K.R. UDAYABHANU, JUDGE.

RV